



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 253

[Docket No. 140401299-4443-01]

RIN 0648-BE15

Fisheries Financing Program; Construction of New Replacement Fishing Vessels

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: NMFS issues this advance notice of proposed rulemaking (ANPR) to provide background information and request public comment on potential amendments to the regulations governing the Fisheries Financing Program (FFP) that address several specific issues currently affecting fishers and fishing companies, and to identify specific measures that might address these issues.

NMFS is requesting public comment regarding the potential implementation of changes to the current prohibitions against using the FFP to finance the cost of new vessel construction and a vessel refurbishing project that materially increases an existing vessel's harvesting capacity.

DATES: Written comments regarding the issues in this ANPR must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2014-0062, by any one of the following methods:

- Electronic submission: Submit all electronic public comments via the Federal e-Rulemaking Portal: Go to www.regulations.gov#!docketDetail;D=NOAA-NMFS-2014-0062, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to NMFS MB5, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel,

or Adobe PDF file formats only. Related documents, including the FFP regulations, are available upon request at the mailing address noted above or on the Financial Services Division's Web page at:

http://www.nmfs.noaa.gov/MB/financial_services/.

FOR FURTHER INFORMATION CONTACT: Paul Marx or Earl Bennett at 301-427-8724.

SUPPLEMENTARY INFORMATION: The FFP was originally created as the Fishing Vessel Mortgage and Loan Insurance program in 1971. It was renamed the Fishing Vessel Obligation Guarantee in 1973. In 1998 it became the FFP. While originally created as a Federal Guarantee program that guaranteed loans made by the private sector, the program ultimately became a direct lending program. The FFP does not require appropriated funds because it has a negative subsidy under the Federal Credit Reform Act (FCRA) of 1991. It operates on the basis of credit authority, provided by the Congress in annual appropriations, which authorizes the program to borrow from the U.S. Treasury. Unused lending authority cannot be obligated after the end of each fiscal year, so the lending authority must be authorized each year. The FFP regulations do not allow financing the cost of new vessel construction or a vessel refurbishing project that materially increases an existing vessel's harvesting capacity.

Additionally, for several years, prior to FY14 (see comments

below), appropriations language has prohibited the use of FFP loan authority for any project that increases the capacity in any U.S. fisheries.

I. Background

The FFP is a direct government loan program that receives annual loan authority from Congress to provide long-term loans to the aquaculture, mariculture, and commercial fisheries industries. These loans involve a wide variety of fisheries activities, including fishing, fish processing, purchases of fishing quota, and aquaculture facilities. Borrowers may be single proprietors, private corporations and limited partnerships, or public corporations. The program can finance up to 80 percent of the cost of an eligible project.

General Program Requirements

In order to be eligible for this program:

1. Borrower must be a U.S. citizen, or an entity who is a citizen for the purpose of documenting a vessel in the coastwise trade under 46 U.S.C. 50501,
2. Borrower must have a good credit and earnings record, net worth, and liquidity in support of the project,
3. Lending must be fully secured with borrower's assets, which may include personal guarantees and additional collateral not directly associated with the project,

4. Borrower must generally have the ability, experience, resources, character, reputation, and other qualifications necessary for successfully operating, utilizing, or carrying out the project.

Loan Terms

The FFP makes long term, fixed rate loans with interest rates of two percent over the U.S. Department of the Treasury's cost of funds. Loan maturities may be up to 25 years, but may not exceed the economic useful life of a project. Loans have no prepayment penalties. All loans are secured by a promissory note, capital assets, and security agreement.

Applicants must pay a fee of 0.5% of the amount applied for with the application for a new loan. Half of this is the filing fee, which is nonrefundable.

Need for Action

The FFP has operated under regulations stating that loans will not be made for the cost of new vessel construction or vessel refurbishing that materially increases an existing vessel's harvesting capacity. Vessel owners have indicated that a significant portion of the existing fleet of U.S. fishing vessels consists of older vessels which are not optimal in terms of safety, efficiency, and environmental and fuel-efficient operation. The country needs to maintain the economic benefits of having a commercial fishing industry. This industry is a

large employer, produces significant exports, and feeds people. The economic benefits trickle down to many segments of the national economy, including but not limited to the insurance, fuel, and vessel supply and equipment sectors. In many communities, the fishing industry is an essential element in their survival. This action will also generate employment by supporting projects in U.S. shipyards. Renewal of our aging fishing fleet would improve both safety and fuel efficiency and assist in maintaining the economic benefits derived from the commercial fishing industry.

Fiscal Year 2014 Appropriations increased FFP's traditional loan authority from \$59 million to \$100 million and removed the language prohibiting its use for new vessel projects that increase capacity. Meeting this new program initiative will require changes to the existing FFP regulations at 50 CFR part 253. Specifically, the regulations will need to be changed to allow the direct loan program to finance the construction of new fishing vessels and projects that increase an existing vessel's capacity under specific circumstances. The regulations would also specify the manner in which these types of loans will be managed, including project review, qualification and collateral requirements, and related provisions.

In this ANPR, NMFS requests comments and input on the proposed program changes, and the provisions that need to be in

place to implement those changes. Specifically, NMFS seeks to answer the following programmatic questions. Can fishing fleets be replaced or modernized without causing overfishing? Does it require that recapitalization occur only in limited access or quota share fisheries? If, implemented, are the suggested lending standards and requirements adequate?

II. Potential Program Solutions

NMFS generally does not want to finance the cost of new fishing vessels or reconstruction of existing vessels that materially increase harvesting. NMFS believes it can entertain financing these costs only for vessels participating in limited access fisheries. Where catch limits control the annual harvest, replacement or improvement of vessels does not increase the total catch. The FFP currently does not make vessel loans in any fisheries that are listed as overfished or subject to overfishing.

1. Questions associated with considering these changes:

- a. How and where to implement new vessel construction lending and remain harvesting neutral?
- b. How to identify, approve and control the use of the replaced vessel?
- c. How to control movement of new or improved vessels to other fisheries?

d. How to protect the FFP from the risks associated with vessel construction lending?

The FFP's regulation prohibits financing the cost of either new vessel construction or a vessel refurbishing project that materially increases an existing vessel's harvesting capacity. NMFS believes it should enter into financing the construction of new vessels and refurbishing that increases a vessel's harvesting capacity only if such lending results in no significant increase in fish harvesting. We will make that determination on an application-by-application basis.

NMFS is considering two approaches in implementing this new authority: Either we will act upon plans submitted by Fishery Management Councils responsible for particular fisheries or we will allow vessel owners in any limited access fishery to use the FFP. Factors to be considered in this determination include:

What fisheries are appropriate for this new lending? Would it be any fishery or just limited access fisheries?

Pros: In a limited access fishery, replacing one vessel with another maintains a constant number of vessels and permits. It provides the fishers or firms with the flexibility to tailor the replacement vessel to the market conditions at the time. If it makes sense to replace an existing vessel with a larger one, the business decision is left to the owner. The new vessel

remains bound by the Total Allowable Catch in the fishery. There is no increase in harvesting.

Cons: Allowing this new lending in any fishery, without limitation, could increase the pressure on stocks not under controlled catch limits.

Where should new vessel construction be authorized - Nationwide, or in specific regions at the request of fisheries governed by specific Fishery Management Councils?

Pros: Implementing the program nationwide would remove ambiguity, allow the fisheries market to determine where and how to recapitalize, and might simplify the changes to the rule. Implementing at the request of Fishery Management Councils (FMC) would accommodate differences between regions and fisheries, and would allow the FMC to more narrowly tailor environmental analyses to regional issues and concerns.

Cons: Implementing the program nationwide might require a programmatic environmental assessment (PEA), addressing all of the fisheries of the United States. Such a PEA could take longer to complete than the time provided to use lending authority in a year. It would also require a significant increase in FFP lending authority, no matter which region was involved. One estimate of new vessel need for the North Pacific alone ranges between \$2.2 and \$4.4 billion. Implementing the program on the basis of Fishery Management Councils' plans could result in

different rules for different fisheries - for example, some fisheries might request loans only for new replacement vessels, while others might request loans for vessel rehabilitation as well.

How to deal with the replaced vessel? In the case of new vessel construction, attention must be paid to the replaced vessel to insure a capacity and harvesting-neutral outcome. With no restrictions on the replaced vessel, it will become available for use in other U.S. fisheries or elsewhere in the world. This result could lead to, or increase, over fishing. The options are to have the vessel scrapped, have the vessel title restricted by revoking its fisheries endorsement and prohibiting foreign transfer, or have no restriction. An alternative would be to prohibit the replaced vessel's use in any U.S. fishery without the written approval of the FMC that manages that fishery. A related question is whether an FMC should be given responsibility to make such approvals. Included in considerations surrounding replacement vessels is what vessel is replaced. Can it be any fishing vessel or must it be one of similar capacity and in the identical fishery? Vessels in limited access fisheries are predominantly federally documented. Should we require that both new and replacement vessels be federally documented?

Pros: To require the replaced vessel to be scrapped would be the most straightforward solution. The business calculation would be simplified. Once the new vessel goes into operation, the replaced vessel would have a set time to be scrapped. However, some owners have expressed the wish to be able to re-sell their replaced vessel to another permit-holder in the same fishery, who would then scrap that replaced vessel. Title restriction allows the replaced vessel, which may have significant residual value, to be used in a non-fishing activity. Applicants will want to realize the greatest financial return from the replaced vessel.

Cons: Requiring vessels to be scrapped may cause owners to delay replacement of older vessels with significant residual value, which would slow the recapitalization effort and extend the use of older, less efficient vessels because of the cost involved and the potential loss of revenue from not having an alternative use. Title restriction has been an issue with State-documented vessels. Having no restriction isn't consistent with being capacity-neutral. Not requiring the vessel to be scrapped creates enforcement difficulties, as illustrated by the vessel capacity reduction programs. Under the latter programs, the U.S. Coast Guard has discovered abandoned buyback vessels docked in harbors, causing environmental and economic damage to the community. Additionally, buyback vessels have shown up in State

waters, fishing in violation of the prohibition against fishing. Since they are not required to have a fisheries endorsement in State fisheries, they fish there with impunity.

What would we consider for the timing of the removal? We see two options. Option one is to require the removal restriction prior to funding the loan. Option two would require the removal restriction within four months of the new vessel being put in service.

Pros: Removal of the replaced vessel prior to funding the loan makes the process straightforward. There is no risk that the loan can be used to increase the number of vessels in a fishery. Removal within four months of the new vessel entering service would provide a break-in period for the replacement vessel, thus minimizing the disruption to the owner's operations.

Cons: Removal prior to funding exposes the vessel owner to sea trials and shake-out risk - potentially having no vessel able to fish until the new vessel is fully seaworthy.

Management of FFP lending risks and traditional lending:

The FFP has a negative FCRA subsidy rate. As such, no appropriation of subsidy is required to allow program lending. New vessel construction lending and major rebuilding projects pose higher credit risks and are more labor intensive than the current program. Additionally, the 2014 appropriation results in

an increase to the FFP's annual loan authority without allocation of this authority. We need to continue to have loans available for the FFP's historical uses. The projected size of the proposed new loans could quickly consume a year's loan authority without providing any loans for historical FFP purposes.

How do we design the requirements and guidelines to protect the FFP's negative subsidy and traditional uses?

Cost overruns pose a significant risk to the FFP. Progress payments while the vessel is in construction represent liabilities in advance of the project generating any revenue. The owner must begin to make debt service payments before the vessel is completed. If the final vessel cost exceeds the original estimate, the vessel owner must make up the difference. Cost overruns are common if not normal for large shipyard projects. The FFP could be left with an unpaid loan, and an unfinished asset with negligible value - the likelihood of a significant loss exists. The way to mitigate this risk is either through a performance bond or insurance, or a reserve fund.

Pros: A performance bond/insurance (a common practice) provides a payout in the event that the vessel is delayed in the shipyard, faces materials cost increases due to market fluctuations, or its final cost increases for other reasons. A reserve fund in the amount of 25% to 50% of the estimated cost

of the vessel provides the same functionality, increasing the assurance that the vessel will be completed and viable for its intended use in a fishery, even if the cost rises inordinately. Either of these mechanisms would reduce the risk to the FFP significantly.

Cons: The performance bond/insurance would raise the owner's cost somewhat. The reserve fund would raise the owner's initial cash needs substantially, requiring the aggregation of between 45% and 70% of the vessel's total cost prior to closing on the FFP loan.

2. Project monitoring:

The vessel construction in progress must be monitored to certify milestones for periodic payments and the adequacy of the work. The FFP does not have the staff, expertise or funds for this. Not having the ability to perform this function would make the credit risk unacceptable. Requiring the borrower to procure such a third party is a reasonable way for NMFS to assure itself that milestones claimed for reimbursement with loan proceeds have, in fact, been met. The applicant will engage a surveyor to perform these functions for them. We need to determine if the same surveyor can jointly represent the applicant and NMFS.

Pros: Use of a vessel surveyor to monitor construction is the standard. Ship surveyors are a skilled trade, with industry certifications and licenses. The cost of the surveyor is

generally proportional to the cost of the vessel. The borrower is responsible for managing and reimbursing the surveyor's costs. NOAA/NMFS could be adequately represented if we required our approval of the surveyor with a requirement to report directly to NMFS. Use of the applicant's surveyor would be paid by the applicant, but NMFS would receive copies of the surveyor's reports to the borrower.

Cons: The borrower has already hired a project manager and other support staff, so the surveyor may add to the overall cost of the vessel. The surveyor will be reporting to the FFP, but hired by the borrower. If one surveyor is reporting to the owner and NMFS but being paid by the owner, there could be a conflict of interest.

3. Lending Allocation

The FFP's annual traditional loan authority has been \$59 million for a number of years. For FY14, it's \$100 million. Even assuming a continuation at the \$100 million level, a few large projects for new vessels or major reconstruction (\$8 - \$25 million or more) could use all available loan authority. The FFP wishes to ensure it can continue to help as many industry participants as possible and provide traditional lending for purposes that don't increase capacity. Should there be an allocation reserved for traditional loan purposes?

Pros: The FFP provides a variety of loans for purposes that do not increase capacity. Examples include aquaculture facilities, existing vessel purchases, vessel repairs, and fish processing facilities. Maintaining a portion of loan authority to support these vital projects is important.

Cons: Lending authority set aside for the primary program would not be available to meet potential demand for new vessels or reconstruction projects. Recapitalization could be slowed as a result.

NMFS seeks comments on these questions and recommendations, as well as any alternatives that may achieve the same goals.

IV. Conclusion

This ANPR explains the Fisheries Finance Program management history while also identifying some major potential changes to the program to support recapitalization and modernization of the fishing fleet. Some of the ideas discussed are specific changes to the current restriction on new vessel construction and reconstruction that materially increases the capacity of an existing vessel. This amendment to the FFP could be implemented through a regulatory action within the next year. The other changes discussed include operational considerations for the loan program, but they also signal an overarching policy on providing loans to support recapitalization of the fishing fleet over the long term.

Additionally, we note that all vessel construction or reconstruction projects will be required to be performed at a shipyard in the United States.

It is NMFS's goal to move forward with a viable and flexible vessel replacement and/or modernization solution that will achieve sustainable fishery goals and objectives while minimizing adverse environmental impacts. NMFS seeks public comment on the above issues and recommendations. NMFS anticipates having a relatively short time to draft, publish, and finalize a rule to implement the new authority, as well as to obligate the funds made available for the purpose, because these funds lapse at the end of the fiscal year for which they were appropriated.

V. Submission of Public Comments

The comment period for all topics discussed in this ANPR closes on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Please see the **ADDRESSES** section of this ANPR for additional information regarding the submission of written comments. NMFS requests comments on the potential adjustment of the FFP program authority to allow the financing of new vessel construction to replace existing vessels in limited access fisheries.

The preceding sections provide background information regarding these topics and ideas for potential changes. The

public is encouraged to submit comments related to the specific ideas and questions asked in each of the preceding sections. All written comments received by the due date will be considered in drafting proposed changes to the Fisheries Finance Program regulations. In developing any proposed regulations, NMFS must consider and analyze ecological, social, and economic impacts. Therefore, NMFS encourages comments that would contribute to the required analyses, and respond to the questions presented in this ANPR.

Classification

This rulemaking has been determined to be not significant for purposes of Executive Order 12866.

Authority: 46 U.S.C. 53701 and 16 U.S.C. 4101 et seq.

Dated: June 23, 2014.

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*Assistant Administrator for Fisheries,
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[FR Doc. 2014-15173 Filed 06/27/2014 at 8:45 am;
Publication Date: 06/30/2014]